IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6689 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

VINODRAY LALJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6689 of 1987

MR DM THAKKAR for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/08/2002

ORAL JUDGEMENT

1. By means of this petition, the petitioner has sought for quashing and setting the impugned orders dated 9-7-1987 and 20-2-1985 passed by the Chief Controller of Stamps and District Collector, Jungadh respectively.

2. The petitioner was a partner in the partnership firm in the name and style of M/s. Madhav Industries, situated at Junagadh. The petitioner along with other partners; Kanjibhai Gokalbhai, Smt. Zamkuben Laljibhai, Navinchandra Laljibhai, Vithalbhai Bavanjibhai. Pursuant to the retirement from the aforesaid firm, the release deed was drawn by continuing the partners which was registered before the Sub-Registrar, Junagadh on 29-9-1981 by registration No. 3077/81. By the said release deed, the petitioner and other retiring partners took their respective share and leaving Maganbhai Laljibhai, Vallabhbhai Veljibhai continuing partners to continue the management of the partnership firm - M/s. Madhav Industries.

3. The Sub-Registrar, Junagadh issued the show cause notice dated 13-9-1984 calling upon the petitioner to show cause as to why additional stamp duty to the tune of Rs.,1,31,810/- and penalty should not be imposed upon the petitioner u/s 39 (1) (b) of the Bombay Stamp Act (referred to as "the Act" for short). It is stated in the show cause notice that the property stated in the said document is of village Junagadh and it should have been written according to Article 53 (b) and 27 (b) of the Bombay Stamp Act and hence stamp duty is used less by Rs.1,31,810/-.

4. The petitioner in response to the aforesaid show cause notice submitted his reply dated 3-12-1984 and it was asserted in the said reply that the deed in question is purely a release deed and therefore stamp duty of Rs.40/- was duly paid in accordance with law and hence no question arises for imposing additional stamp duty or any penalty. Looking to the terms and conditions and nature of the terms of the deed executed, it is purely a release deed and not falling within the scope of Article 53 (b) (i) and 27 (b) of the Bombay Stamp Act. But the Collector, Junagadh vide his letter dated 20-2-1985 directed the petitioner to pay additional stamp duty of Rs.1,31,810/- and penalty of Rs.13,181/- in exercise of power under Section 39 (1) (b) of the Bombay Stamp Act. The petitioner being aggrieved and dissatisfied by the judgment and order of the Collector, Junagadh, filed a Revision Application before the Chief Controller of the Stamps - respondent no. 1. The respondent no. 1 proceeded ex-parte without giving sufficient opportunity hearing neither to the petitioner nor the advocate of the petitioner nor served with the notice, date 19-6-1987 was fixed for hearing. The respondent no.1 passed the order dated 9-7-1987 confirmed the order of the Collector, Junagadh.

5. Heard the learned counsel for the parties and I have read carefully the relevant material on record.

6. The contention of the learned advocate for the petitioner is that in fact there is no dissolution of the partnership firm and therefore the provisions of Section 53 (b) (i) of the Act are not attracted. Secondly, the deed in question is a simple agreement whereby some claims of immovable properties have been released or relinquish in favour of the petitioner and therefore the document in question was rightly stamped under Section 58 of the Act. The decision of the authorities in imposing the additional stamp duty and penalty is arbitrary, unjustified, erroneous and illegal. The authorities have erred in not properly interpreting and applying the scope of Section 53 (b) (i) and 27 (b) of the Act which has resulted in injustice to the petitioner. The document in question is neither a deed of dissolution of the aforesaid partnership firm nor a deed of conveyance to attract the scope of Article 53 (b) (i) and 27 (b) of the Act. The document in question is neither the document of dissolution of partnership nor document of conveyance, as it appears from the terms and conditions of document in question that it is only a release deed or a deed of relinquishment of rights of continuing partners of the partnership firm - M/s. Madhav Industries. There is no dissolution of the partnership firm. Since the retiring partners are getting only share and any price of sale and therefore it cannot be said that the document in question is not a release deed. The release deed in question was registered in year 1981 before the Sub-Registrar and after lapse of more than three years, the petitioner has been directed to pay any additional stamp duty on misinterpretation of the document in question at belated stage.

7. On the contrary, the learned A.G.P. has submitted that the orders passed by the authorities are fully justified and do not suffer from any illegality or infirmity. As such, no interference is called for by this Court in exercise of extra ordinary jurisdiction of Article 226 of the Constitution of India. As per the statutory provisions of Section 53 (b) (i) of the Act the stamp duty is payable on the price of the immovable properties. According to Article 27 (a) or (b) of the Act, on the dissolution of the partnership firm. If any partner is retired by taking the share of the partnership firm or any immovable property by way of their share and in that case the same is required to pay at the rate of conveyance deed u/s 27 (b) of the Act on the price of the

property. The deed in question does not appear to be a release deed. But by the release deed five partners have retired and they have got certain properties as retiring benefits. As such, the provisions of Article 53 (b) and 27 (a) or (b) of the Act would be applicable for additional stamp duty and the penalty.

8. I have considered the contentions made by the learned counsel for the parties and also carefully gone through the relevant papers on record.

9. The contention of the learned counsel for the petitioner that the document is question is release deed and it is not a deed of transfer or conveyance or even the deed of dissolution of the partnership firm and hence the stamp duty is not required to paid by the petitioner on the deed in question is fully justified and both authorities have committed manifest error on the face of the record inasmuch as Article 53 (b) of the Act provides that any property which is not brought as share of the principle amount at the time of establishment of the partnership firm and such partner gets immovable property in his share at the time of the dissolution of the partnership firm, then, the stamp duty is payable on the price of the immovable property under Article 27 (a) or 27 (b) of the Act. Thus, from Article 53 (b) of the Act it is clearly evident that any share invested by any partner at the time of establishment of the partnership firm and if that share is taken by the partner, no stamp duty is payable in respect of that share. If any more share is taken besides the share invested by the partner at the time of establishment of the partnership, he would require to pay additional stamp duty. There is no finding at all by any of the authorities that the petitioner or retiring the partner get share more than the share which was invested by them at the time of establishment of the partnership firm. As such, in all probability, it will be presumed that the retiring partners have got their share which they had invested at the initial stage at the time of establishment of the partnership firm. Secondly, the revenue department has not contended before any of the authorities that the entire property which has been taken by the retiring partners is not the property which was invested by them at the initial stage of the establishment of the partnership firm. As such, without considering anything, the Collector authority has imposed additional stamp duty and penalty for recovery and that order has been affirmed by the Revisional Authority respondent no. 1.

10. The learned counsel for the petitioner has relied

on the decision of the full bench of this Court in the case of Vrajlal Makandas Valiya Vs. L.D. Joshi, Collector, Dist. Bhavnagar reported in 1971 (12) G.L.R. 586. He has also relied on the decision of the Special Bench of Madras High Court in the case of The Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. Dr. K. Manjunatha Raj reported in AIR 1977 Madras 10,. He has further relied on the decision of Madras High Court in the case of Board of Revenue and another Vs. V.M. Murugesa Mudaliar of Gudiyatham, reported in AIR 1955 Madras 461.

11. I have fully considered the submissions of the learned advocate for the petitioner and I find that the authorities have not cared to see as to what property and amount is required to be stamped with the additional stamp u/s 53 (b) (i) of the Act. Admittedly, the retiring partners must have invested their property in the partnership firm, that property is not required to be paid any additional stamp duty. If he retires with share of that property or partnership firm is dissolved and the property which was invested by the partners is taken back, either in value or cash the amount, that property is not required to be paid any additional stamp duty. The authorities have not excluded the property invested by the retiring partners. Moreover, in the release deed at page 3 it is mentioned that out of free will and pleasure the partners have executed agreement on 5-8-1981 with mutual understanding after examining the account books and revoking the property, after deciding right and share according to investment made by the party retirement beneficiary of the partnership firm, one plot of Rs.11 lacs together with investment thereon has been decided to be given to other partner you as a share of the said partnership firm. As per the said agreement, out of the said properties, Rs.6,60,000/- have been decided to be given to Shri Vinodchandra Laljibhai and Rs.4,40,000/- to Shri Kanjibhai Gokalbhai. The said property has been given to the party, the description of which has been given under the document after settling the amount with the partners. Thus, the petitioner and other partners have taken jointly possession of the property as retirement benefit. They have no right, title or interest in the said property and the document binds all the partner including the petitioner in writing. Thus, it is apparent that some properties were invested by each of the partners including the retiring partners and they are entitled for their share which was invested by them at the initial stage either at the time of retirement or at the time of dissolution of the partnership firm and that property is not required to be

stamped with any additional stamp duty or penalty.

12. From the impugned orders passed by the authorities, it appears that the Revenue Department has not pointed before the authorities that the retiring partners had no property in the partnership firm or they got shares which were not invested by them in the partnership firm at the initial stage or they had got much more properties as retirement benefits and that property was not invested at the earliest stage and that more properties which were not invested by any retiring partner which is required to be stamped with additional stamp duty. Even if the dissolution of the partnership firm, if any additional property is received by partner and if no additional property is received by the retiring or any partner, then, that property is not required to be stamped with additional stamp. If no contention was raised by the Revenue Department before any of the authorities, the petitioner is not required to open all A/c. books before the authority concerned. The authority concerned imposed additional duty and penalty presuming that the property received by the retiring partners was not invested by them at the initial stage and that was property was taken by them as profit of the partnership firm. In the similar case, the full Bench of this Court in the case of Vrajlal Makandas Valiya (supra) has held as under :

> "The retiring partners merely took moneys representing their respective shares in the partnership and went out of the firm. This position becomes very clear if we consider what is the true nature of the interest of a partner in a partnership and what happens when a partner retires from the firm."

13. In that case, three partners retired after getting their share in cash. This Court, held that the instrument was not conveyance or sale, and therefore, not a conveyance within the meaning of sec. 2 (g) and hence it must be held to be not chargeable under Article 25(b) of the First Schedule. Moreover, the instrument could not be said to be a deed of dissolution and that document was an agreement or at any rate a memorandum of agreement relating to the retirement and it must, therefore, be held that it was chargeable to stamp duty under Article-5.

14. Considering the facts and circumstances of the case, the impugned orders passed by the authorities do not appear to be passed on the true facts of the case and

the authorities have presumed that the petitioner and other retiring partners have taken share which was not invested by them at the initial stage and hence the stamp duty was payable under Article 27 (a) & (b) of the Act.

15. In view of the above discussion, the petition deserves to be allowed and the impunged orders are liable to be quashed and set aside. Accordingly, the present petition is allowed and the impugned orders dated 9-7-1987 and 20-2-1985 passed by the Chief Controller of Stamps and District Collector, Junagadh respectively, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Kundan Singh,J.)

-0-0-0-0-0-

/JVSatwara/